

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

KIM LEE MILLBROOK,	:	CIVIL ACTION NO. 3:12-CV-421
	:	
Plaintiff	:	(Chief Judge Conner)
	:	
v.	:	
	:	
UNITED STATES OF AMERICA, <i>et al.</i>,	:	
	:	
Defendants	:	

ORDER

AND NOW, this 20th day of June, 2016, upon consideration of the motion (Doc. 126) to strike by *pro se* plaintiff Kim Lee Millbrook (“Millbrook”), requesting that the court strike the United States’ motion (Doc. 122) to redesignate the above-captioned matter as a non-jury case, and further upon consideration of the court’s order (Doc. 124) dated June 15, 2016, wherein the court granted the United States’ motion, concluding that Millbrook’s sole remaining claim against the United States arises under the Federal Tort Claims Act (“FTCA”), 28 U.S.C. § 2671, and that, as an FTCA complainant, Millbrook is not entitled to a jury trial, see 28 U.S.C. § 2402, and it appearing that Millbrook acknowledges that he is not entitled to trial by jury and instead requests that the court convene an advisory jury pursuant to Federal Rule of Civil Procedure 39(c), see FED. R. CIV. P. 39(c)(1), such that the court will construe Millbrook’s motion as a request to empanel an advisory jury, and the court noting that the decision to grant or deny such a request rests entirely within the discretion of the trial judge, see id.; Mala v. Crown Bay Marina, Inc., 704 F.3d 239, 249 (3d Cir. 2013), and the court concluding that the fact-finding assistance of an advisory jury is

unnecessary in this case and thus declining to exercise its discretion to empanel an advisory jury pursuant to Rule 39(c), it is hereby ORDERED that:

1. Millbrook's motion (Doc. 126) to strike is CONSTRUED as a request to empanel an advisory jury pursuant to Federal Rule of Civil Procedure 39(c)(1) and is DENIED as so construed.
2. This matter shall proceed by bench trial as set forth in the court's order (Doc. 124) dated June 15, 2016.

/S/ CHRISTOPHER C. CONNER
Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania